

change of status of the other programmers are given particular weight, generally meets the duties requirements for the executive exemption.

Subpart F—Outside Sales Employees

§ 541.500 General rule for outside sales employees.

(a) The term “employee employed in the capacity of outside salesman” in section 13(a)(1) of the Act shall mean any employee:

(1) Whose primary duty is:

(i) making sales within the meaning of section 3(k) of the Act, or

(ii) obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and

(2) Who is customarily and regularly engaged away from the employer’s place or places of business in performing such primary duty.

(b) The term “primary duty” is defined at § 541.700. In determining the primary duty of an outside sales employee, work performed incidental to and in conjunction with the employee’s own outside sales or solicitations, including incidental deliveries and collections, shall be regarded as exempt outside sales work. Other work that furthers the employee’s sales efforts also shall be regarded as exempt work including, for example, writing sales reports, updating or revising the employee’s sales or display catalogue, planning itineraries and attending sales conferences.

(c) The requirements of subpart G (salary requirements) of this part do not apply to the outside sales employees described in this section.

§ 541.501 Making sales or obtaining orders.

(a) Section 541.500 requires that the employee be engaged in:

(1) Making sales within the meaning of section 3(k) of the Act, or

(2) Obtaining orders or contracts for services or for the use of facilities.

(b) Sales within the meaning of section 3(k) of the Act include the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property. Sec-

tion 3(k) of the Act states that “sale” or “sell” includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(c) Exempt outside sales work includes not only the sales of commodities, but also “obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer.” Obtaining orders for “the use of facilities” includes the selling of time on radio or television, the solicitation of advertising for newspapers and other periodicals, and the solicitation of freight for railroads and other transportation agencies.

(d) The word “services” extends the outside sales exemption to employees who sell or take orders for a service, which may be performed for the customer by someone other than the person taking the order.

§ 541.502 Away from employer’s place of business.

An outside sales employee must be customarily and regularly engaged “away from the employer’s place or places of business.” The outside sales employee is an employee who makes sales at the customer’s place of business or, if selling door-to-door, at the customer’s home. Outside sales does not include sales made by mail, telephone or the Internet unless such contact is used merely as an adjunct to personal calls. Thus, any fixed site, whether home or office, used by a salesperson as a headquarters or for telephonic solicitation of sales is considered one of the employer’s places of business, even though the employer is not in any formal sense the owner or tenant of the property. However, an outside sales employee does not lose the exemption by displaying samples in hotel sample rooms during trips from city to city; these sample rooms should not be considered as the employer’s places of business. Similarly, an outside sales employee does not lose the exemption by displaying the employer’s products at a trade show. If selling actually occurs, rather than just sales promotion, trade shows of short duration (*i.e.*, one or two weeks) should not be considered as the employer’s place of business.